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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In Re:	)	Bankruptcy Case No.
	)	04-64719-aer13
JOHN ROBERT BAILEY and	)	
ROXANNE GAIL BAILEY,	)	MEMORANDUM OPINION
	)	
<u>Debtors.</u>	)	

**BACKGROUND**

This matter comes before the court on the Chapter 13 Trustee's (Trustee) Motion for Instructions. This Chapter 13 case was filed on June 15, 2004. Creditor Wilco Distributing, Inc. (Wilco) which is a pre-petition judgment creditor, objected to confirmation. Confirmation was denied. The Debtors moved to dismiss and on March 16, 2005 the case was dismissed.

In the interim, the Chapter 13 Trustee had collected \$4,800 in plan payments. After dismissal, before he could distribute the accumulated plan payments to the Debtors, Wilco served Trustee with a garnishment under state (Oregon) law. Trustee then filed the present motion for instructions.

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1 On the other hand, courts holding that the funds must be  
2 returned to the debtor largely base their reasoning on the plain  
3 language of § 1326(a)(2) which mandates return of the funds to the  
4 debtor (after payment of administrative expense claims under  
5 § 503(b)).<sup>2</sup> See, In re Davis, 2004 WL 3310531, 2 (Bankr. M.D. Ala.  
6 2004); In re Oliver, 222 B.R. 272, 275 (Bankr. E.D. Va.1998); In re  
7 Walter, 199 B.R. 390, 392 (Bankr. C. D. Ill.1996).

8 This court agrees with the latter line of cases. Section  
9 1326(a)(2) is clear and unambiguous, therefore, its dictates must be  
10 followed. See United States v. Ron Pair Enterprises, Inc., 489 U.S.  
11 235, 242, 109 S. Ct. 1026, 1031, 103 L.Ed.2d 290, \_\_ (1989) (where  
12 the Supreme Court held that courts must follow a statute's plain  
13 language unless doing so would produce a result demonstrably at odds  
14 with the intentions of its drafters).<sup>3</sup>

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18 <sup>2</sup> Here, no § 503(b) claims have been asserted.

19 <sup>3</sup> In Beam v. I.R.S. (*In re Beam*), 192 F.3d 941 (9<sup>th</sup> Cir. 1999), the  
20 court required a Chapter 13 trustee, in similar circumstances, to honor an  
Internal Revenue Service levy. Beam, however, is easily distinguishable  
21 from the facts here, as it involved a conflict between two federal  
statutes (11 U.S.C. § 1326(a)(2) vs. IRS levy statutes, 26 USC §§ 6331 and  
22 6334(a) & (c)). The court held § 1326(a)(2) must give way, based on the  
levy statutes' language, which among other things, did not exempt funds  
23 held by a Chapter 13 trustee from levy. Id. at 944-45. Here,  
§ 1326(a)(2) is pitted against Oregon's garnishment scheme, codified at  
24 ORS 18.600-18.850. To the extent the two statutory schemes conflict, the  
Oregon statutes must give way based on the Supremacy Clause, U.S. Const.,  
25 art. VI, cl. 1.2, and its related doctrine of preemption. Davis, supra at  
2 (§1326(a)(2) preempts state garnishment statutes). See also, In Re  
26 Harris, 258 B.R. 8, 12-13 (Bankr. D. Id. 2000) (refusing to extend Beam to  
an attorney's state law charging lien).

1 In addition, sound policy reasons support returning the funds  
2 to the debtor. As ably put by the Davis court,

3 This disposition of the money [to the debtor]  
4 serves several purposes. First, it fosters the policy  
5 of encouraging debtors who are financially able to  
6 repay their debts to file chapter 13. It ensures that  
7 debtors who attempt chapter 13 will not be penalized  
8 for an unconfirmed attempt. Returning the money to  
9 the debtor ensures the orderly and efficient  
10 disposition of chapter 13 cases. Congress no doubt  
11 considered the possibility that creditors would like  
12 to participate in the money held by the trustee. By  
13 requiring the trustee to return the money to the  
14 debtor, Congress ensured that any attempts to reach  
15 the money would ensue outside the jurisdiction of the  
16 bankruptcy court. Therefore, unconfirmed cases may be  
17 closed as quickly as statutorily possible following  
18 dismissal. Holding to the contrary would create a  
19 "race to the trustee" and effectively ignore the  
20 statutory mandate to return the money to the debtor.

21 Davis, supra at 2.<sup>4</sup>

22 Based on the above, Trustee will be ordered to disburse the  
23 funds on hand to the Debtors forthwith. A separate order shall be  
24 entered. This opinion constitute the court's findings of fact and  
25 conclusions of law under FRBP 7052. They shall not be separately  
26 stated.

*Albert E. Radcliffe*

ALBERT E. RADCLIFFE  
Chief Bankruptcy Judge

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<sup>4</sup> The Davis court also noted that adhering to §1326(a)(2) was consistent with § 348(f), which, absent a showing of bad faith, returns to the debtor, upon conversion, post petition earnings held by the Ch. 13 Trustee, and with § 349(b), which, upon dismissal, reverts property of the estate in the entity in which such property was vested immediately before the commencement of the case. Id. at 2.